B to A any more than if A had directly discharged them. *Kelley* v. *Lindsey* (Mass. 1856) 7 Gray 287. It has been further objected—inconsistently, it is submitted, with the equitable nature of the remedy—that A's relation to B is too remote: *Kilgour* v. *Finlayson* (1789) 1 H. Bl. 155: A enabled X to make the payment, but as it was X who chose so to apply the money, the benefit came from X rather than from A. *Nat'l. Bk.* v. *Bd. of Sup'rs, supra,* 494.

Some of these questions, it is conceived, were really involved in a recent New York case. *Title Guarantee & Trust Co.* v. *Haven* (1908) 111 N. Y. Supp. 305. The plaintiff (A) had accepted and paid a check, the signature of the maker of which was forged. The payee, the City of New York, applied it, at the forger's (X's) direction, without the defendant's (B's) knowledge, to discharge a lien against land which the defendant had already contracted to sell unencumbered and which he later so conveyed. Clearly the defendant was enriched to the amount of the lien, and at the plaintiff's expense. The benefit, however, was unsolicited, and, as the lien had been discharged of record, could not, it seems, be rejected. Moreover, as the benefit came from the payee of the check directly or as agent of the forger rather than from the plaintiff, it may be considered too remotely connected with the plaintiff, within *Nat'l Bk.* v. *Bd. of Supervisors, supra.* On the other hand, if the defendant restore, he will be no more out of pocket than if the whole transaction had never occurred, and so is not in the position of one who, if compelled to pay for unrequested improvements of his property, must invest additional capital. And the objection against sanctioning any disturbance of one's affairs by a stranger loses some force in this case in view of the contract (already partly performed) to convey the land unencumbered. *Stephen* v. *Bd. of Education, supra,* is not controlling, since here the defendant gave no consideration. Because of the exceptional circumstances, a recovery *quasi ex contractu,* would, it is submitted, conform to the broad conception of the remedy. But a denial of recovery finds support in the (somewhat meagre) authorities, especially *Nat'l Bank* v. *Bd. of Supervisors, supra.*

The Court (two judges dissenting) took the short ground that recovery was precluded by § 112 of the Negotiable Instruments Law: "The acceptor by accepting admits the genuineness of" the drawer's "signature." But the sole aim of the Negotiable Instruments Law, it would seem, is the currency of negotiable paper. How one who has surrendered nothing on the faith of an instrument can have been within the intent of the statute, is difficult to see. The corresponding section of the British Bill of Exchange Act, 45 & 46 Vict. c. 61, § 54 (2), expressly limits the drawee's admission to holders in due course; and in *Price* v. *Neal* (1762) 3 Burr. 1354, the repeatedly recognized source of the doctrine enacted by § 112, *supra,* the defendant was a *bona fide* holder for value, as in every subsequent available case. Cf. Story, Bills (4th Ed.) §§ 262, 411; Bigelow, Bills, etc. (2nd Ed.) 225. And the tendency has been to limit *Price* v. *Neal.* See Morse, Banking (3rd Ed.) Chap. XXXIII.

DAMAGES IN NEGLIGENCE CASES.—The fundamental distinction between the measure of the defendant's duty in determining whether a wrong has

been committed, and the measure of liability when a wrong has been committed, pointed out by Holmes, J., in *Spade* v. *Lynn etc. R. R. Co.* (1899) 172 Mass. 488, was recognized as applying to negligence cases by Blackburn, J., in *Smith* v. *London etc. Ry Co.* (1870) L. R. 6 C. P. 14 at 22, where it is said that while reasonable anticipation is important in considering whether the defendant has been negligent, it has no application in measuring damages resulting from the tort. *Sneesby* v. *Lancashire etc. Ry. Co.* (1874) L. R. 9 Q. B. 263; *Stevens* v. *Dudley* (1883) 56 Vt. 158. A person guilty of *some* injury by negligence is, therefore, liable for all damages which flow therefrom by ordinary natural sequence whether he could have foreseen them or not, if no independent cause intervenes. *McGarrahan* v. *New York etc. R. R. Co.* (1898) 171 Mass. 211; *Lehigh etc. Ry. Co.* v. *Marchant* (1898) 84 Fed. 870. Some cases embody this principle in slightly different terms, saying that the defendant is liable for the injury if in the light of the actual (and not apparent) state of affairs they appear to have been the natural and probable consequences of his negligence. *Marsh* v. *Paper Co.* (1906) 101 Me. 489; *Hill* v. *Winsor* (1875) 118 Mass. 251. Others assert that if consequences follow in unbroken sequence without an intervening cause, it is sufficient if the defendant might have foreseen that *some* injury might result. *Illinois Central R. R. Co.* v. *Siler* (1907) 229 Ill. 390; *Balt. etc. Ry. Co.* v. *Kemp* (1883) 61 Md. 74. These three statements are synonymous, making direct causal connection the test of damages, and while the last may apply equally to determine the actionability of the negligence, it of necessity excludes the test of reasonable anticipation as measuring the extent of damage.

Respectable authority, however, supports the view that the defendant is liable only for such damages as might have been foreseen. Pollock, Torts, 40. But many of the cases ordinarily cited for this position are not in point. They decide merely that no tort existed at all, since *none* of the injuries alleged might have been foreseen, and some injury must be foreseen to establish a breach of duty. *Milwaukee etc. Ry. Co.* v. *Kellogg* (1876) 94 U. S. 469. Moreover, the few cases which do directly maintain this test, rest for authority solely upon cases of the character just described. *Scheffer* v. *R. R. Co.* (1881) 105 U. S. 249. *Stewart* v. *City of Ripon* (1875) 38 Wis. 584, illustrates the forced interpretation of terms which must necessarily follow its application. That recovery in this case should have been allowed is sound, but to say that the aggravation of injuries by the plaintiff's constitutional tendency to scrofula was a result which should have been foreseen, is to make reasonable anticipation synonymous with direct causal sequence, and to rob it of virtue in its true sphere.

It is difficult to see why the defendant is not liable for all the direct consequences of a wrongful act whether negligence be its foundation or not. He is admittedly guilty of a tort toward the plaintiff for which, were it an assault, *Vosburg* v. *Putney* (1891) 80 Wis. 523, or a trespass, *Eten* v. *Luyster* (1875) 60 N. Y. 252, he would be liable for all direct results. It is said that the defendant's responsibility should be diminished where the wrong is unintentional, 8 A. & E. Encyc. 601, but aside from pure negligence cases there seems to be no such limitation. *West* v. *Forest* (1856) 22 Mo. 344 (unintentional assault and battery); *McAndrews* v. *Collerd*

(1880) 42 N. J. L. 189 (unintentional nuisance). In civil actions arising out of a breach of statute the test of reasonable anticipation has no place. *Smith* v. *Milwaukee etc.* (1895) 91 Wis. 360 (building requirements); *Salisbury* v. *Herchenroder* (1871) 106 Mass. 458 (hanging of signs). It is submitted, therefore, that the reasonable anticipation of the defendant should not measure the damage arising from his actionable negligence. 9 Harv. Law Rev. 80.

In a recent case a Pullman porter stole from a stateroom a bag containing medicines. As a result, the plaintiff, a woman in delicate health, and dependent on the medicines, collapsed physically. The court held the Pullman Company liable in negligence for its servant's acts, and repudiating the test of reasonable anticipation, gave damages for plaintiff's physical injury and mental suffering. *Bacon* v. *Pullman Co.* (1908) 159 Fed. 1. In conceiving an action for injury inflicted by the wilful act of the company's servant as an action for negligence, the court erred; 8 COLUMBIA LAW REVIEW 326; but assuming the case to be properly such, sound principles were applied. The delicate health of the plaintiff is not an intervening cause, *Crane Elevator Co.* v. *Lippert* (1894) 63 Fed. 942; note, 10 Am. State Rep. 64, and her mental suffering may be taken into account, *Homans* v. *Boston etc. Ry. Co.* (1902) 180 Mass. 456, if connected with bodily injury, Joyce, Damages § 220, and not caused merely by contemplation or worry over the possible results of the injury. *Maynard* v. *Oregon R. R. Co.* (1904) 46 Ore. 15. In jurisdictions where the cause of action consists of the wrongful act, and the injury to the person and property are regarded merely as different items of damage, Burdick, Torts, 213, the result in the principal case is to be supported. Where, however, personal rights are recognized as distinct from property rights, *Brunsden* v. *Humphrey* (1884) 14 Q.B.D. 141; *Reilly* v. *Sicilian Asphalt Co.* (1902) 170 N. Y. 40, and the act of the porter would support two actions, the rule of direct causal sequence in measuring damage would be limited. In an action for injury to property, no damages could be allowed for injury to the person, and *vice versa.* In the principal case, therefore, damages for physical collapse and mental suffering would be recoverable only if sufficient in themselves to support an action.

STATUTES OF REPOSE AND THE "DUE PROCESS" CLAUSE.—Statutes of Limitation, properly so called, are strongly favored by the courts, and their constitutionality unquestioned if a reasonable time is allowed for suit. See *Terry* v. *Anderson* (1877) 95 U. S. 628. They are commonly viewed as protective measures of a personal nature; the theory is that one who makes an adverse claim shall have the dispute settled before the facts are obscured or the evidence lost. *Riddlesbarger* v. *Hartford Ins. Co.* (1868) 7 Wall. 386. From a practical standpoint, the convenience of the courts may appear a further consideration; yet, theoretically, it is of little importance, since the statute may be waived. It is also said that failure to bring an action within a reasonable time raises a presumption against its original validity, *Battle* v. *Shivers* (1869) 39 Ga. 405, or that the right has been abandoned. *Gilfillan* v. *Union Canal Co.* (1883) 109 U. S. 401. A Statute of Limitations cannot, however, operate *ex proprio vigore* to transfer the ownership of property. Although in Massachusetts a statute has been